

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

THE ESTATE OF BISHAR ALI
HASSAN, and BILAY ADEN IDIRIS,

Plaintiffs,

VS.

MUNICIPALITY AND CITY OF
ANCHORAGE, MATTHEW HALL,
NATHAN LEWIS, BRETT
EGGIMAN, and DOES 1-2
INCLUSIVE,

Defendants.

Case No. 3:21-cv-00076-JWS

ORDER

MOTION PRESENTED

At docket 21, the Municipality of Anchorage, Matthew Hall, Nathan Lewis, and Brett Eggiman (the “Municipal Defendants”) filed a motion to strike and preclude testimony from two expert witnesses included in the final witness list filed by The Estate of Bishar Ali Hassan and Bilay Aden Idiris (“Plaintiffs”), but who were not previously identified as experts pursuant to this court’s scheduling order. Plaintiffs filed an opposition at docket 23. The reply was filed at docket 25. Oral argument would not be of assistance to the court.

DISCUSSION

The parties were required to identify expert witnesses on or before January 30, 2022, and then identify any responsive supplemental expert witnesses within fourteen days thereafter. They were required to provide their expert disclosures on or before March 30, 2022. Plaintiffs did not file any expert identification or disclosure. Instead, they waited until June 1, 2022, in their final witness list, to disclose their intention to present a force expert and economic expert. Municipal Defendants subsequently filed this motion to strike. After due consideration of the parties' briefing, the court agrees with Municipal Defendants' position that Plaintiffs' late identification is without substantial justification and is not harmless.¹

The justification Plaintiffs provide is based on hardship. They assert it took time to raise funds to find an expert they could afford, and when an expert was identified in April 2022 they needed additional funds in order for that expert to complete a report. However, Plaintiffs' attorney did not, in light of this hardship, seek an extension of the expert deadlines, and there is no explanation of actual efforts taken to identify or retain experts prior to April of 2022. April was over two months after Plaintiffs were required to identify experts. April also was after the expert disclosure deadline, and therefore by the time Plaintiffs even found an expert, Municipal Defendants already had provided their experts' reports to Plaintiffs. Moreover, when experts were found in April, Plaintiffs failed to promptly notify Municipal Defendants

¹ *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1107 (9th Cir. 2001).

1 about it and seek a scheduling order modification from the court. They waited until
2 June, and even then they only included their names in the final witness list.
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4 The delay is not harmless. By the time the Plaintiffs' experts were
5 located, Municipal Defendants already had provided their experts' reports to Plaintiffs,
6 which Plaintiffs could then provide to their own experts to consider when forming and
7 drafting opinions. Municipal Defendants have had no opportunity to receive a report
8 from Plaintiffs' experts and provide a rebuttal report, and the discovery deadlines have
9 passed. The court agrees with Municipal Defendants that this is not a case where the
10 effects of the delay can be easily rectified by a limited extension of the discovery
11 timeline. Furthermore, the exclusion of Plaintiffs' expert witness on the issue of force
12 does not prevent their claim from moving forward.
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CONCLUSION

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16 For these reasons, which are more fully explained in Municipal
17 Defendants' reply brief, the motion to strike at docket 21 is GRANTED. The two
18 previously undisclosed expert witnesses—Mr. Barry Brodd and Mr. Hugh Richards—
19 are hereby stricken from Plaintiffs' Final Witness List and will not be permitted to
20 offer testimony in this matter.
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23 IT IS SO ORDERED this 9th day of August, 2022, at Anchorage, Alaska.
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26 */s/ John W. Sedwick*
27 JOHN W. SEDWICK
28 Senior United States District Judge